



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

A. Schuyler

REPLY TO THE ATTENTION OF:
R-19J

MAR 08 2004

Sheryl A. Corrigan, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Rd. N.
St. Paul, Minnesota 55155-4194

Dear Ms. Corrigan:

Thank you for your letter of December 23, 2003, regarding the U.S. Environmental Protection Agency's (U.S. EPA) inspection of underground storage tanks at the Trout Junction facility in Onamia, Minnesota, and Tribal boundary issues regarding the townships of Kathio, South Harbor, and Isle Harbor. The United States Department of Interior, through the Bureau of Indian Affairs and the Solicitor's Office, is responsible for making determinations regarding reservation boundaries. The Department of the Interior has taken the position that the boundaries of the Mille Lacs Reservation, as defined by the Band's Treaty of 1855, remain intact. We enclose two letters that set forth in detail the Solicitor's Office opinion and which U.S. EPA has consistently and publicly referenced when responding to questions regarding the boundary of the Mille Lacs reservation. The U.S. EPA relies upon the Solicitor's Office opinion in administering Federal environmental programs for the Mille Lacs Reservation. Therefore, we must disagree with your characterization that the fee land areas within the Mille Lacs Reservation are "disputed." The U.S. EPA's position is that these areas discussed in your letter are within "Indian Country" as that term is defined in 18 U.S.C. § 1151(a).

In your letter, you requested that when we perform inspections on Tribal lands, Region 5 will: 1) notify the State where and when we will be conducting inspections; 2) invite the State to participate; and 3) copy the State on all correspondence related to the inspections. As you know, Region 5 and each State environmental agency have agreed to procedures for communicating U.S. EPA enforcement activities conducted within a State. These procedures are referred to in the Memorandum of Agreement entered into as part of the UST State program approval process for Minnesota. This agreement was based on a national model agreement. This process has served well to involve State agencies in U.S. EPA enforcement activities within the scope of a State's authorized program.

Similarly, Region 5 has developed a Civil Enforcement and Compliance Assistance in Indian Country: Questions and Answers Document. This document is based on U.S. EPA's National Guidance on the Enforcement Principles outlined in the 1984 Indian Policy. A copy of the Region 5 guidance, which includes as Attachment-A the National Guidance, is enclosed for your

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information. This document outlines Region 5's principles for consulting and communicating with Federally recognized tribes as we carry out our compliance monitoring and enforcement responsibilities in Indian Country.

In this document, Region 5 states that it will notify the specific Tribal Government of our inspections, invite the Tribe to participate in the inspection, and keep the Tribal Government informed of overall compliance issues. Region 5 acknowledges that there may be some cases where Tribal Governments and States may wish to cooperate in carrying out their respective environmental programs. In our Communications Plan, we inform the tribe that it is their decision to invite the State to participate in a Region 5 inspection within Indian Country. We will continue to conform to the Region 5 Civil Enforcement plan and National Guidance for enforcement activities within Indian Country. This means that we cannot agree to your suggestions insofar as Indian Country is concerned. However, we recognize the interest MPCA may have in responding to questions from its citizens. The Underground Storage Tank program will remain available to address any particular questions or issues as they may arise. Region 5 also is willing to explore the possibility of facilitating future discussions between the MPCA and the Mille Lacs Band regarding the State's requests raised in this letter. Please let me know if you would like us to facilitate such a meeting.

I appreciate your continuing efforts to work in partnership with the U.S. EPA to ensure protection of human health and the environment in Minnesota. I hope this information is helpful, please contact me if you have any further questions about this matter.

Very truly yours,
/s/ original signed by
Thomas V. Skinner
Thomas V. Skinner
Regional Administrator

Enclosures